

## REMARKS

### I. Summary of Office Action

Claims 1 and 3-13 are now pending in the application.

The Examiner rejected claims 1, 3-6, and 10-13 under 35 U.S.C. § 102(e) as being anticipated by Ten Kate et al. U.S. Patent No. 6,601,237 (hereinafter "Ten Kate"). The Examiner rejected claims 7-9 under 35 U.S.C. § 103(a) as being unpatentable over Ten Kate.

### II. Summary of Telephonic Interview

On April 18, 2006, the Examiner and the undersigned conducted a telephonic interview on the merits of the above-identified patent application. Applicants and the undersigned wish to thank the Examiner for the courtesies extended during the interview.

The undersigned has reviewed the Examiner's remarks in the Interview Summary. The undersigned acknowledges that, during the April 18, 2006 Interview, the undersigned discussed with the Examiner the patentability of independent claim 1 with respect to Ten Kate.

Details of the interview will appear in the Remarks below where appropriate. Generally, the undersigned submitted, and the Examiner agreed, that Ten Kate is directed to methods and systems for rescheduling programming conflicts using a virtual channel, and therefore does not show or suggest the features of "an advertisement campaign," "an advertisement template," or "an advertisement assembly component." The undersigned also submitted that Ten Kate does not "get appropriate media segments for each of said media segment slots of said advertisement template from a database and incorporate said appropriate media segments into said advertisement template."

The Examiner stated that the undersigned should set forth the arguments made during the interview in written form and that they would be considered. Accordingly, applicants have incorporated the concepts discussed in the interview in the Remarks below.

### **III. Summary of Applicants' Reply**

Applicants have amended independent claims 1, 3, 5, 6, 8, and 10-13 in order to particularly point out and distinctly claim the subject matter which applicants regard as their invention.

The Examiner's rejections of the claims are respectfully traversed.

Reconsideration of this application is respectfully requested.

### **IV. The Rejection of Independent Claims 1, 10 and 13 Under 35 U.S.C. § 102(e)**

The Examiner rejected each of pending independent claims 1, 10, and 13 under 35 U.S.C. § 102(e) as being unpatentable over Ten Kate. The Examiner's rejection of these claims under this section is respectfully traversed.

Applicants respectfully submit that, contrary to the Examiner's contention, each of independent claims 1, 10, and 13 is allowable for at least the reasons set forth below.

#### **A. Applicants' Independent Claims are Allowable Over Ten Kate**

Applicants' independent claim 1 relates to a system for dynamically constructing a non-interactive personalized advertisement to be viewed by an intended audience. As defined by independent claim 1, this system includes:

an advertisement campaign, including:

an advertisement template, defining a framework for constructing said personalized advertisement, said advertisement template comprising a plurality of media segment slots constituting said personalized advertisement, said media segment slots including video segment slots and audio segment slots, wherein at least one video segment slot overlaps at least one audio segment slot; and

a plurality of media segments including video segments and audio segments, each video segment selectable for insertion into at least one of said video segment slots of said advertisement template, wherein several of said video segments are selectable for a same one of said video segment slots of said advertisement template, and wherein each audio segment is selectable for insertion into at least one of said audio segment slots of said advertisement template;

a plurality of expert rules; and

an advertisement assembly component, responsive to user profile data of said intended audience, and configured to apply said plurality of expert rules to said user profile data in order to get appropriate media segments for each of said media segment slots of said advertisement template from a database and incorporate said appropriate media segments into said advertisement template, in order to assemble said personalized advertisement for said intended audience, said assembly performed without interaction by said intended audience.

Ten Kate, on the other hand, discusses methods and systems for rescheduling programming conflicts using a virtual channel. (*See, e.g.*, Ten Kate, Abstract.) More particularly, as shown in FIG. 4, in Ten Kate, a virtual channel that includes content from channel A, channel B, and a VCR. The VCR is used to record desired programs that are being broadcast at the same time. The user assigns priorities that determine which program is watched and which program is recorded. The recorded program is placed into a gap where no desired programming is being provided.

Applicants respectfully submit that, contrary to the Examiner's contention, Ten Kate does not show or suggest the system defined by independent claim 1 for at least the reasons set forth below.

**(i) Ten Kate Does Not Show or Suggest an Advertisement Campaign**

As recited above, applicants' claim 1 requires "an advertisement campaign, including: an advertisement template, defining a framework for constructing said personalized advertisement, said advertisement template comprising a plurality of media segment slots constituting said personalized advertisement, said media segment slots including video segment slots and audio segment slots, wherein at least one video segment slot overlaps at least one audio segment slot." As explained in applicants' specification, "[t]he narrative framework for the final personalized message is a story as defined by a message campaign. The advertisement campaign includes an advertisement template and a collection of media segments." The media segments (e.g., audio, video, background, animation, graphs, voice, etc.) are selected and then assembled to produce the final personalized advertisement at assembly time. (*See, e.g.*, Applicants' specification, page 6, lines 8-19.)

Contrary to the Examiner's suggestion on page 3 of the Office Action, FIGS. 2B and 3 of Ten Kate (or any other portion of Ten Kate) do not show or suggest "an advertisement template"

that includes video segment slots and audio segment slots. Rather, FIGS. 2B and 3 of Ten Kate merely show a Service Description Table and Event Description Tables that an electronic program guide uses to generate an on-screen display of program listings. An electronic guide display is not an advertisement nor is it a template for generating a personalized advertisement.

In addition, applicants wish to point out to the Examiner that the program guide of Ten Kate is presented to the viewer. Unlike Ten Kate, applicants' system of claim 1 uses the advertisement template to assemble the personalized advertisement. It is the personalized advertisement that is viewed by the intended audience, not the advertisement template.

Accordingly, applicants respectfully submit that Ten Kate fails to show or suggest a system including, among other things, "an advertisement campaign, including: an advertisement template, defining a framework for constructing said personalized advertisement, said advertisement template comprising a plurality of media segment slots constituting said personalized advertisement, said media segment slots including video segment slots and audio segment slots, wherein at least one video segment slot overlaps at least one audio segment slot."

**(ii) Ten Kate Does Not Show or Suggest a Plurality of Media Segments**

As recited above, applicants' claim 1 requires "a plurality of media segments including video segments and audio segments, each video segment selectable for insertion into at least one of said video segment slots of said advertisement template, wherein several of said video segments are selectable for a same one of said video segment slots of said advertisement template, and wherein each audio segment is selectable for insertion into at least one of said audio segment slots of said advertisement template." Contrary to the Examiner's suggestion on page 3 of the Office Action, for at least the following reasons, Ten Kate does not show or suggest this element of applicants' claimed invention.

As explained above, Ten Kate does not show or suggest an advertisement template that includes audio segment slots and video segment slots. In fact, the electronic program guide of Ten Kate is not capable of including audio and video segment slots, where at least one video segment slot and at least one audio segment slot overlap. Applicants submit that Ten Kate has nothing to do with audio and video segment slots. Instead, Ten Kate uses a user selectable virtual channel to solve programming conflicts. When two desired program are simultaneously

broadcast, the Ten Kate system records the program with the lower user assigned priority rating and reschedules it at a later time using the virtual channel. The virtual channel tunes to the appropriate channel for broadcast programs or the VCR for recorded programs. (*See Ten Kate*, col. 6, lines 47-62.) Thus, audio segments or video segments cannot be inserted into the virtual channel of Ten Kate.

Accordingly, because Ten Kate fails to show or suggest any use of “video segment slots” or “audio segment slots,” applicants respectfully submit that Ten Kate must also fail to show or suggest a system including “a plurality of media segments including video segments and audio segments, each video segment selectable for insertion into at least one of said video segment slots of said advertisement template, wherein several of said video segments are selectable for a same one of said video segment slots of said advertisement template, and wherein each audio segment is selectable for insertion into at least one of said audio segment slots of said advertisement template.”

**(iii) Ten Kate Does Not Show or Suggest Assembly Performed Without Interaction By Said Intended Audience**

As recited above, applicants’ claim 1 requires “an advertisement assembly component, . . . said assembly component performed without interaction by said intended audience.”

In contrast to applicants’ claimed invention, Ten Kate does not show or suggest using any component that assembles the personalized advertisement without interaction by the intended audience. Instead, as described above, Ten Kate uses a user selectable virtual channel to solve programming conflicts. Based on user assigned priority ratings, the virtual channel merely tunes to the appropriate channel for broadcast programs (e.g., CH-A, CH-B) or the VCR for recorded programs (e.g., VCR) (*See Ten Kate*, FIG. 4). Ten Kate does not assemble a personalized advertisement.

In addition, the virtual channel of Ten Kate tunes to a channel or the VCR based on priority ratings that are assigned by the user (i.e., with interaction by the intended audience). In order to fill a gap, the virtual channel module is capable of controlling the tuner and the demultiplexer to select a default channel. The identification of the default channel can be “chosen or altered by the user.” (*See Ten Kate*, col. 6, lines 5-6.) Ten Kate clearly does not

assemble a personalized advertisement "without interaction by said intended audience," as required by claim 1.

Accordingly, applicants respectfully submit that Ten Kate fails to show or suggest a system including, among other things, "an advertisement assembly component, . . . said assembly component performed without interaction by said intended audience."

In view of the foregoing, applicants respectfully submit that independent claim 1 is allowable over Ten Kate. Therefore, applicants respectfully request that the rejection of claim 1 be withdrawn by the Examiner.

Similarly, the remaining independent claims 10 and 13 are allowable for at least the same reasons. Therefore, applicants respectfully request that the rejection of independent claims 10 and 13 also be withdrawn by the Examiner.

#### **V. The Rejection of Dependent Claims 2-9, 11, and 12**

The Examiner rejected each of dependent claims 2-9, 11, and 12 under one of 35 U.S.C. §§ 102(e) and 103(a) as being unpatentable over Ten Kate. Applicants respectfully traverse the Examiner's rejection.

Applicants respectfully submit that claims 2-9, 11, and 12, each of which depends from one of independent claims 1 and 10, are allowable for at least the same reasons that the independent claims are patentable as set forth above.

In addition, the Examiner takes Official Notice with respect to the rejection of claims 7-9. Applicant traverses these rejections. The MPEP specifically states that:

Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. *See Lee*, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection). . . . The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to official notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made.

MPEP § 2144.03. Accordingly, applicants request that the Examiner provide an affidavit under 37 C.F.R. Section 1.104(d)(2) detailing the reasons why it is well known, or to provide a prior art reference showing these features. In the absence of either, applicants respectfully request that the Examiner withdraw the rejections of claims 7-9.

Therefore, applicants respectfully request that the Examiner withdraw the rejections of claims 2-9, 11, and 12.

## CONCLUSION

Applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited prior art shows any of the elements recited in the claims. However, applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

In addition, each of the combination of limitations recited in the claims includes additional limitations not shown or suggested by the prior art. Therefore, for these reasons as well, applicants respectfully request withdrawal of the rejection.

Further, there is no motivation shown to combine the prior art cited by the Examiner, and even if these teachings of the prior art are combined, the combination of elements of claims, when each is interpreted as a whole, is not disclosed in the Examiner's proposed combination. As the combination of elements in each of the claims is not disclosed, applicants respectfully request that the Examiner withdraw the rejections.

Applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples applicants have described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, applicants assert that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicants have emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, applicants do not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, applicants are providing examples of why the claims described above are distinguishable over the cited prior art.

Applicants wish to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, applicants reserve the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely applicants' best attempt at providing one or more definitions of what the applicants believe to be suitable patent protection. In addition, the present claims provide the



intended scope of protection that applicants are seeking for this application. Therefore, no estoppel should be presumed, and applicants' claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, applicants hereby retract any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were unnecessary to obtain allowance, and only maintains the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, applicants specifically retract statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, applicants respectfully submit that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, applicants respectfully submit that the Application is in condition for allowance, and that such action is earnestly solicited.

## AUTHORIZATION

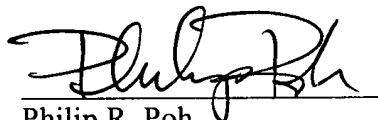
The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment to Deposit Account No. 08-0219.

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Commissioner is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 08-0219.

Respectfully submitted,

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